

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KEVIN JOSEPH ST. JOHN,

Plaintiff,

v.

OFFICER JOHN KRIMMEL; ET AL.,

Defendants.

HONORABLE JEROME B. SIMANDLE

Civil Action
No. 17-cv-00539 (JBS-AMD)

OPINION

APPEARANCES:

Kevin Joseph St. John, Plaintiff Pro Se
232 Market Street, Apt. B
Gloucester, NJ 08030

SIMANDLE, District Judge:

1. Plaintiff Kevin Joseph St. John seeks to bring a civil rights complaint pursuant to 42 U.S.C. § 1983 against Officer John Krimmel, Officer Thomas Havers, Officer Stephen Pratt, Sgt. David Dolson, and Camden County Correctional Facility Staff Members (collectively referred to as "CCCCF personnel") for allegedly unconstitutional conditions of confinement. Complaint, Docket Entry 1.

2. 28 U.S.C. § 1915(e)(2) requires courts to review complaints prior to service in cases in which a plaintiff is proceeding *in forma pauperis*. Courts must *sua sponte* dismiss any claim that is frivolous, is malicious, fails to state a claim

upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. This action is subject to *sua sponte* screening for dismissal under 28 U.S.C. § 1915(e)(2)(B) because Plaintiff is proceeding *in forma pauperis*.

3. For the reasons set forth below, the Court will dismiss the Complaint without prejudice for failure to state a claim. 28 U.S.C. § 1915(e)(2)(b)(ii).

4. The present Complaint does not allege sufficient facts to support a reasonable inference that a constitutional violation has occurred in order to survive this Court's review under § 1915. Even accepting the statements in Plaintiff's Complaint as true for screening purposes only, there is not enough factual support for the Court to infer a constitutional violation has occurred.

5. To survive *sua sponte* screening for failure to state a claim¹, the Complaint must allege "sufficient factual matter" to show that the claim is facially plausible. *Fowler v. UPMS*

¹ "The legal standard for dismissing a complaint for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) is the same as that for dismissing a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6)." *Samuels v. Health Dep't*, No. 16-1289, 2017 WL 26884, slip op. at *2 (D.N.J. Jan. 3, 2017) (citing *Schreane v. Seana*, 506 F. App'x 120, 122 (3d Cir. 2012)); *Allah v. Seiverling*, 229 F.3d 220, 223 (3d Cir. 2000)); *Mitchell v. Beard*, 492 F. App'x 230, 232 (3d Cir. 2012) (discussing 28 U.S.C. § 1997e(c)(1)); *Courteau v. United States*, 287 F. App'x 159, 162 (3d Cir. 2008) (discussing 28 U.S.C. § 1915A(b)).

Shadyside, 578 F.3d 203, 210 (3d Cir. 2009) (citation omitted).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Fair Wind Sailing, Inc. v. Dempster*, 764 F.3d 303, 308 n.3 (3d Cir. 2014). "[A] pleading that offers 'labels or conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Moreover, while *pro se* pleadings are liberally construed, "*pro se* litigants still must allege sufficient facts in their complaints to support a claim." *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013) (citation omitted) (emphasis added).

6. With respect to factual allegations giving rise to his claims, Plaintiff states: "inmates including myself were not given any other option to have suitable sleeping or general accommodation so were required to sleep on floor of cell when three or more inmate were placed in two man cells. I had to sleep on floor under bunks or next to toilets in cells that were not cleaned or maintained. On many occasions there was urine and toilet paper on floor where I slept. I was stepped on by the inmates. Could not get clean linens after haven [sic] to place

them on floor to sleep and they would be wet." Complaint § III(C).

7. Plaintiff states he was detained at the Camden County Correctional Facility ("CCCF") between January and December 2009, as well as during various detentions between 2010 and 2016. *Id.* § III(B).

8. With respect to requested relief, Plaintiff seeks "the maximum financial companation [sic] allowed by law." *Id.* § V.

9. Even construing the Complaint as seeking to bring a civil rights complaint pursuant to 42 U.S.C. § 1983 for alleged prison overcrowding, any such purported claims must be dismissed because the Complaint does not set forth sufficient factual support for the Court to infer that a constitutional violation has occurred.

10. The mere fact that an individual is lodged temporarily in a cell with more persons than its intended design does not rise to the level of a constitutional violation. *See Rhodes v. Chapman*, 452 U.S. 337, 348-50 (1981) (holding double-celling by itself did not violate Eighth Amendment); *Carson v. Mulvihill*, 488 F. App'x 554, 560 (3d Cir. 2012) ("[M]ere double-bunking does not constitute punishment, because there is no 'one man, one cell principle lurking in the Due Process Clause of the Fifth Amendment.'" (quoting *Bell v. Wolfish*, 441 U.S. 520, 542 (1979))). More is needed to demonstrate that such crowded

conditions, for a pretrial detainee, shocks the conscience and thus violates due process rights. *See Hubbard v. Taylor*, 538 F.3d 229, 233 (3d Cir. 2008) (noting due process analysis requires courts to consider whether the totality of the conditions "cause[s] inmates to endure such genuine privations and hardship over an extended period of time, that the adverse conditions become excessive in relation to the purposes assigned to them."). Some relevant factors are the length of the confinement(s), whether plaintiff was a pretrial detainee or convicted prisoner, any specific individuals who were involved in creating or failing to remedy the conditions of confinement, any other relevant facts regarding the conditions of confinement, etc.

11. The Complaint alleges that CCCF Personnel, Officer John Krimmel, Officer Thomas Havers, Officer Stephen Pratt, Sgt. David Dolson and Camden County Correctional Facility Staff members are liable for these conditions, and constitutional violation. However, this case must be dismissed without prejudice as to CCCF Personnel because the Complaint does "[not] allege[] any personal involvement by [these defendants] in any constitutional violation - a fatal flaw, since 'liability in a § 1983 suit cannot be predicated solely on the operation of *respondeat superior*.'" *Baker v. Flagg*, 439 F. App'x 82, 84 (3d Cir. 2011) (citing *Rode v. Dellarciprete*, 845 F.2d 1195, 1207

(3d Cir. 1988)). "[Plaintiff's] complaint contains no allegations regarding [these individual defendants]. 'Because vicarious liability is inapplicable to § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution.' Thus, [plaintiff] failed to state a claim against [the individual defendants]." *Bob v. Kuo*, 387 F. App'x 134, 136 (3d Cir. 2010) (citing *Ashcroft*, 556 U.S. at 676). Given that the Complaint does not, in the first instance, sufficiently allege a violation of overcrowding, Plaintiff has not asserted a colorable constitutional claim to which any CCCF Personnel's individual liability could attach. Accordingly, Plaintiff's Overcrowding Claim against the CCCF Personnel defendants must be dismissed without prejudice.

12. Moreover, to the extent the complaint seeks relief for conditions Plaintiff encountered during periods of confinement ending prior to January 26, 2015, those claims are barred by the statute of limitations and must be dismissed with prejudice, meaning that Plaintiff cannot recover for those claims because they have been brought too late.² Civil rights claims under § 1983 are governed by New Jersey's limitations period for personal injury and must be brought within two years of the

² Plaintiff filed this complaint on January 26, 2017.

claim's accrual. See *Wilson v. Garcia*, 471 U.S. 261, 276 (1985); *Dique v. N.J. State Police*, 603 F.3d 181, 185 (3d Cir. 2010).

"Under federal law, a cause of action accrues when the plaintiff knew or should have known of the injury upon which the action is based." *Montanez v. Sec'y Pa. Dep't of Corr.*, 773 F.3d 472, 480 (3d Cir. 2014).

13. Plaintiff alleges the events giving rise to his claims occurred during numerous detentions between 2009 and 2016.

Complaint § III. The allegedly unconstitutional conditions of confinement at CCJ, namely the overcrowding, would have been immediately apparent to Plaintiff at the time of his detention; therefore, the statute of limitations for Plaintiff's claims arising from his incarcerations between 2009 and 2014 expired well before this complaint was filed in 2017. Plaintiff therefore cannot recover for these claims.³

14. As Plaintiff may be able to amend his Complaint to address the deficiencies noted by the Court, the Court shall

³ Although the Court may toll, or extend, the statute of limitations in the interests of justice, certain circumstances must be present before it can do so. Tolling is not warranted in this case because the state has not "actively misled" Plaintiff as to the existence of his cause of action, there are no extraordinary circumstances that prevented Plaintiff from filing his claim, and there is nothing to indicate Plaintiff filed his claim on time but in the wrong forum. See *Omar v. Blackman*, 590 F. App'x 162, 166 (3d Cir. 2014).

grant Plaintiff leave to amend the complaint within 30 days of the date of this order.⁴

15. In the event Plaintiff files an amended complaint, he should include specific facts, such as the dates and length of confinement(s), whether Plaintiff was a pretrial detainee or convicted prisoner, any specific individuals who were involved in creating or failing to remedy the conditions of confinement, and any other relevant facts regarding the conditions of confinement. Conclusory statements are not enough.

16. Plaintiff should note that when an amended complaint is filed, the original complaint no longer performs any function in the case and cannot be utilized to cure defects in the amended complaint, unless the relevant portion is specifically incorporated in the new complaint. 6 Wright, Miller & Kane, Federal Practice and Procedure 1476 (2d ed. 1990) (footnotes omitted). An amended complaint may adopt some or all of the allegations in the original complaint, but the identification of the particular allegations to be adopted must be clear and explicit. *Id.* To avoid confusion, the safer course is to file an amended complaint that is complete in itself. *Id.* The amended complaint may not adopt or repeat claims that have been dismissed with prejudice by the Court.

⁴ The amended complaint shall be subject to screening prior to service.

17. For the reasons stated above, the Complaint is dismissed without prejudice for failure to state a claim. The Court will reopen the matter in the event Plaintiff files an amended complaint within the time allotted by the Court.

18. An appropriate order follows.

July 5, 2017
Date

s/ Jerome B. Simandle
JEROME B. SIMANDLE
U.S. District Judge